

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

JAMES MCDONALD,

Plaintiff,

v.

ONEWEST BANK, FSB, *et al.*,

Defendants.

No. C10-1952RSL

ORDER CONTINUING TRIAL DATE  
AND REOPENING DISCOVERY

This matter comes before the Court on “Plaintiff’s Motion for Continuance of Trial to Allow Examination/Inspection of the Original Note and to Add Examiner as a Witness.” Dkt. # 227. Despite holding an evidentiary hearing on January 31, 2013, there remains an issue of fact regarding whether defendants have actual possession of the original, signed promissory note at this point in time. While the document shown to the Court at the end of the hearing has a blue-ink signature, plaintiff’s challenge to its authenticity is not unreasonable or unfounded. Defendants have presented at least two versions of the note in judicial proceedings with attestations that each is a true and correct copy of the original debt instrument. See Dkt. # 49 at 17-23; In re James Bradley McDonald, B.R. No. 10-18496SJS (Dkt. # 19, Ex. A). The signature pages of the proffered notes are materially different, however, meaning that at least one of these attestations is false. The varying placement of the IndyMac Bank, F.S.B. endorsement cannot be

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1 conclusively explained as an artifact of the copying process, and defendants have offered no  
2 theory under which the two copies could reflect the same, original document. The testimony of  
3 OneWest's witness at the evidentiary hearing gives rise to the reasonable inference that  
4 OneWest sometimes makes copies of the original note at or near the time of closing, thereafter  
5 endorsing and producing copies of a copy (rather than the original) for litigation purposes. In  
6 these circumstances, the Court finds that plaintiff should be given an opportunity to test  
7 defendants' claim that the note presented to the Court on January 31, 2013, is the original  
8 promissory note that plaintiff signed in January 2007.

9 Defendants' timeliness objections are overruled. Defendants have repeatedly  
10 presented to the Court what purports to be a photocopy of the original promissory note  
11 accompanied by declarations made under penalty of perjury that the original was in their  
12 possession. Many of these assertions turned out to be untrue. While plaintiff suspected from the  
13 beginning that the original was not actually in defendants' possession, his reliance on  
14 defendants' assertions that the document it submitted was a copy of the original was not  
15 unreasonable. The fact that it took plaintiff until after the close of discovery to realize that  
16 documents submitted by defendants to the Court could not all be copies of the original note is  
17 not surprising given defendants' constant assurances to the contrary.

18 The trial date in the above-captioned matter is hereby STRICKEN. Plaintiff shall  
19 have three months from the date of this Order to conduct additional discovery regarding the  
20 authenticity of the note presented at the evidentiary hearing. Defense counsel Heidi Buck  
21 Morrison shall make the note available for inspection by plaintiff, plaintiff's counsel, and/or  
22 plaintiff's expert(s) at her offices on seven days' notice. To the extent plaintiff hires an expert to  
23 provide an opinion regarding the authenticity of the note, he shall provide a report consistent  
24 with Fed. R. Civ. P. 26(a)(2)(B) on or before June 3, 2013. Defendants may, if they choose,  
25 depose the expert(s) prior to June 27, 2013. Any discovery-related motions must be filed by that  
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1 date. A revised case management schedule authorizing additional motions in limine will be  
2 issued.

3 Plaintiff's request that the costs of the additional discovery contemplated by this  
4 Order be shifted to defendants is DENIED. Plaintiff's request that consideration of the summary  
5 judgment motions be continued is also DENIED. Where resolution of a claim depends on the  
6 current location of the original promissory note, claims that depend on that fact will not be  
7 resolved through summary judgment.

8 Dated this 7th day of March, 2013.

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10 Robert S. Lasnik

11 United States District Judge  
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